

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOEY GEORGE,

Defendant.

NO. CR22-109RSM

**GOVERNMENT’S RESPONSE  
TO GEORGE’S APPEAL  
OF DETENTION ORDER**

George terrorized individuals around the country with threats of racial violence. He orchestrated this campaign over a period of months. He continued his campaign after having multiple contacts with law enforcement. He escalated his conduct, calling multiple stores on the eve of his arrest, including targeting a Tops grocery store in Buffalo, the same chain where 10 people were murdered in a racially-motivated attack in May of this year. Magistrate Judge Tsuchida correctly determined that George is a threat to the community and a risk of flight. He should remain detained.

**BACKGROUND**

**A. The Buffalo Threats**

On July 19, 2022, an individual called a Tops grocery store in Buffalo, New York. The caller, who identified himself as “Peter,” spoke with an employee at the store. The caller asked how many Black people were in the store. He said he would make the news

1 if he shot and killed all of the Black people, including all of the women, children, and  
 2 babies. He asked if the employee had cleared out the building. He said there was a  
 3 chance he was already in the store, or somewhere nearby. He said that if he did not see  
 4 anyone at the store, he would travel to the Jefferson Tops store, where a gunman had  
 5 killed ten people in a racially-motivated attack in May 2022. During the July 19 call,  
 6 “Peter” said he was a really good shot and could pick off people from the parking lot. He  
 7 said he had assault rifles and other weapons.

8 The caller attempted to mask his phone number by using \*67. According to phone  
 9 records, the call was made from 206-579-2843. This phone number belongs to Joey  
 10 George. On the following two days, George called at least three other stores in the  
 11 Buffalo area and made similar threats.

#### 12 **B. The San Bruno Threat**

13 On May 12, 2022, a person, using the same telephone number, called Shari’s Cafe  
 14 and Pies in San Bruno, California. An employee of the restaurant answered the phone.  
 15 The caller, who identified himself as “Tony,” threatened to shoot any Black or Hispanic  
 16 patrons in the restaurant if the restaurant did not close within twenty minutes. The San  
 17 Bruno Police Department (SBPD) responded to the call. A SBPD Officer called back  
 18 the number and spoke with a male who identified himself as “Tony Sumorrah.” This  
 19 individual provided a date of birth in October of 1982, but refused to provide his address.  
 20 The individual told the SBPD Officer that he called the Shari’s restaurant because he  
 21 wanted to attack Black people and strike fear into the Bay Area’s Black community. He  
 22 stated Black people are not human, but rather “sub-humans.” He said he was proud of his  
 23 actions because he instilled fear in the employees and customers of the restaurant.

#### 24 **C. The Maryland Threat**

25 On September 11, 2021, a call placed from the same number was made to the  
 26 Verilife Dispensary in Rockville, Maryland. An employee of the business answered the  
 27 call and a male who identified himself as “David Lester” threatened to shoot and kill

1 “n\*\*\*ers” [redacted] at the business. The individual calling himself “Lester” told the  
 2 employee that he was sick of “n\*\*\*ers” [redacted] harassing his girlfriend and he was on  
 3 his way to the business to shoot and kill “n\*\*\*ers.” [redacted]. The manager of the  
 4 business attempted to speak with the caller and de-escalate the threats, but she became  
 5 alarmed when “David Lester” threatened a particular employee at the business, accurately  
 6 describing the employee’s appearance, including their skin tone.

7 A Montgomery County Police Department (MCPD) officer called the number  
 8 after the threats were made. The officer spoke with a male who identified himself as  
 9 “David Lester.” This person stated that he wanted to shoot any “n\*\*\*ers” [redacted] who  
 10 were at the Verilife Dispensary upon his arrival.

11 On September 21, 2021, a MCPD detective telephoned the same number (206-  
 12 579-2843) and asked to speak with George by name, after having identified him as the  
 13 subscriber for George’s telephone number. The male who answered the phone identified  
 14 himself as George. The detective identified himself as a law enforcement officer with  
 15 MCPD and proceeded to have a conversation with George. During the call, George  
 16 admitted to making the telephone threats to Verilife Dispensary and stated, “I felt Black  
 17 people do too much and have it coming. I did it for fear.”

#### 18 **D. The Connecticut Threat**

19 On September 11, 2021, the user of the same number called a Denny’s restaurant  
 20 in Enfield, Connecticut. During the call, the male caller asked the employee who  
 21 answered the telephone if there were any Black people in the restaurant. The employee  
 22 responded that there likely were Black patrons because the restaurant invites customers of  
 23 all races. The caller responded that he would throw a bomb through the window and  
 24 “fuck everybody up.” The caller made a second call that same day to the restaurant. This  
 25 time, an Enfield Police Department (EPD) Officer spoke with the caller. The caller  
 26 admitted to calling the restaurant earlier and directing the employee to clear the restaurant  
 27 of Black people.

**D. George's Post-Arrest Admissions**

On July 21, 2022, George was arrested. George, post-*Miranda*, stated the following:

- He admitted calling the Shari's restaurant in California and threatening to "kill every Black person in the restaurant." He admitted saying that if the restaurant did not close in twenty minutes, he would go there and shoot all of the Black people in the restaurant.
- He admitted calling two Tops supermarkets in Buffalo. He said, "I mean, there was a mass shooting two months ago, that was on. That's how I knew about it. I never knew that store existed until I seen the mass shooting. And I guess I was inspired to scare them."
- He admitted to calling the Shari's and Tops supermarkets for the purpose of scaring Black people, and for the purpose of getting them to close down for at least a short period of time.
- He admitted to making calls to businesses around the country, including to a Denny's in Connecticut.
- He admitted placing all of these calls from his residence in Lynnwood, Washington.
- He admitted that what he had done was wrong, but repeatedly expressed that he had racist beliefs.
- He admitted to posting racist statements on social media, but said he avoided making any threats to kill on the internet to avoid "leaving a paper trail."

**E. The Detention Hearing**

On July 21, 2022, George was arrested. On July 25, 2022, the Court held a detention hearing. At the hearing, the Court found:

Obviously, we have some positive factors. You have lived a long time in Western Washington. You have got a mother. You're obviously close with her, so that weighs in your favor. But I think on the other hand, there's no way around it. This is a spectacularly concerning allegation. And I think the Government has the stronger argument of saying there's a difference between a person who says something off the cuff in the heat of the

1 moment, a one-time thing. Maybe they were drinking and maybe they were  
2 having an argument, but the Complaint is an allegation that over a number  
3 of months beginning last September, there was a series of phone calls to  
4 different places repetitively asking about, "Are there minorities there or  
5 black people or Mexican people or Hispanics," and basically saying, "If  
6 there are, I'm going to shoot or kill these people." And making sort of  
7 derogatory comments about the fact that they're not white people.

8 So once you begin seeing this whole pattern of, it starts in September  
9 according to the Complaint, and it just continues all the way to this month.  
10 And, apparently, the police and you spoke recently and there might have  
11 been even more calls that they didn't know about and weren't reported in  
12 the Complaint. So I think the pattern of consistent threats allegedly made  
13 all over the United States is just one that we can't duck and one that, really,  
14 I think cuts against you. To the extent you allegedly made statements,  
15 making admissions, of course that weighs in the Government's favor in  
16 terms of the weight of the evidence.

17 Your lawyer is correct. This is not a trial. I am not here to decide if you  
18 are guilty or if you are innocent or what should happen. All of these things  
19 are being considered only in the context of a release or detention decision  
20 and for nothing else.

21 Mr. George, I know that life can be difficult and I know you have had your  
22 own personal challenges, according to the Pretrial report. That always  
23 causes some instability, and I think instability is not a good factor in terms  
24 of whether you show up or don't show up. You already got actually a  
25 warrant for your arrest issued by a state court in Maryland for phone calls  
26 allegedly made there. So there is more than this case already pending  
27 against you. I think your lawyer has argued -- I think Mr. Woods actually  
said, "I'm not here to say I know for sure what's going to happen." But I  
think what the challenge here, of course, is, is that the pattern can't be  
avoided. And I do know that you did talk to police officers allegedly on the  
phone, but the calls continued. So having police contact didn't necessarily  
stop the behavior. All right. So you have some positive things, but I think  
on balance the negative outweigh it, and I have to conclude that I cannot  
release you, given the nature of the charges in terms of the danger you may  
present to the community. It's kind of sketchy about your risk of flight.  
You have some instability, you have a warrant for your arrest, and those are  
not positive factors, too.

26 So I will issue a detention order today, Mr. George, all right? And what that  
27 means is that you will be held at the Federal Detention Center. . . .

1 Dkt. 26, Ex. A, 18-21.

2 After the hearing, the Court entered a detention order. Dkt. 14. The Court stated:

3 Defendant, Joey David George, is charged by complaint with two counts of  
 4 making Interstate Threats in violation of 18 U.S.C. § 875(c). The  
 5 complaint alleges Mr. George made phone calls on July 19, 2022, July 20,  
 6 2022, January 16, 2022, May 12, 2022, September 21, 2021, September 11,  
 7 2021 to various stores, restaurants, and other establishments in the states of  
 8 New York, Maryland, California, and Washington. In each of these calls  
 9 Mr. George made statements to the effect that he was going to shoot and  
 10 kill African American or Hispanic individuals. Mr. George was contacted  
 11 by state law enforcement officers, and he admitted making the calls.  
 12 However, even after speaking with law enforcement officers, Mr. George  
 13 continued to make phone call allegedly threatening to kill certain  
 14 individuals. The alleged conduct establishes a pattern of deliberate actions  
 to make threats to kill people. This is not a case in which the allegation  
 involved fleeting conduct or was made once in the heat of the moment.  
 The United States proffered that when the FBI arrested Mr. George, he  
 admitted making the threats to kill and disclosed other threatening calls he  
 made to establishments in Houston, Georgia, and Connecticut. The nature  
 of the offense is thus extremely serious and does not support release. . . .

15 The Court has also considered the fact that Mr. George lives with his  
 16 mother, and thus has ties to Western Washington, and has no criminal  
 17 history. These are obviously factors that weigh in favor of release. But the  
 18 Court also notes Mr. George struggles with emotional or mental health  
 19 challenges, admits to daily use of Cannabis, and has had on-and-off mental  
 20 health treatment, and that some of his family members tended to minimize  
 21 his alleged conduct. His mental health problems and drug use indicate he is  
 22 unstable especially considering the allegations that he continued to make  
 23 threats even after being contacted by law enforcement. Mr. George also  
 24 faces criminal charges in the state of Maryland and the court there issued a  
 warrant for his arrest which is still pending. In sum, while there are some  
 positive factors such as ties to the community and lack of criminal history,  
 the other factors the court considers weigh against release. The Court  
 accordingly concludes that Mr. George is both a danger to the community  
 and poses a risk of flight and must be detained.

25 *Id.*

26 On September 1, 2022, George moved to reopen detention. Dkt. 26. George  
 27 offered two things as a change of circumstances justifying reopening detention. First,

George noted that Probation had opposed George's release on the ground that two family members who lived at George's proposed residence refused to cooperate with Probation. George noted that these two individuals had left the residence. Second, George stated that he had filed a motion to dismiss the indictment on First Amendment grounds, which he claimed showed that he "did not commit a criminal offense."<sup>1</sup> *Id.* at 2. Magistrate Judge Tsuchida denied the motion to reopen detention, focusing on the two family members who had left the residence, stating:

The Court finds this new development does not support reopening detention and release. At the detention hearing the Court considered the factors in favor of release such as Defendant lived with his mother, has ties to Western Washington, and no criminal history. However, the Court detained Defendant because despite these favorable factors, the Court found detention should be ordered based upon the gravity of the offense conduct; the long term and widespread nature of the alleged criminal conduct which evidenced a pattern of deliberate actions to make threats to kill; Defendant's alleged continuation of making threats despite being contacted by law enforcement; and Defendant's drug use and mental health problems. The fact Defendant can live at this mother's home does not undermine the other factors upon which the Court relied in ordering detention.

Dkt. 27 at 1-2.

George has now filed a motion to appeal the detention order.

### **LEGAL STANDARD**

Title 18, United States Code, Section 3145(b) permits the defendant to seek review of a detention order. If a review is undertaken, the district court must conduct a *de novo* review of the detention order, and it need not give deference to the factual findings or the ultimate conclusion of the Magistrate Judge. *See United States v. Koenig*, 912 F.2d 1191-92 (9th Cir. 1990). However, the Ninth Circuit has made clear that the precise nature of the review in each case is left to the sound discretion of the district court. *Id.* ("Clearly, the district court is not required to start over in every case, and proceed as if

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<sup>1</sup> The Court subsequently denied the motion to dismiss. Dkt. 30.



1 the magistrate’s decision and findings did not exist.”). Moreover, the decision as to  
 2 whether to hold oral argument is left to the district court’s discretion. *Id.* (“If the  
 3 performance of that function makes it necessary or desirable for the district judge to hold  
 4 additional evidentiary hearings, it may do so. . .”).

5 The key question in the detention analysis in this case is whether any condition or  
 6 combination of conditions will reasonably assure the appearance of the defendant as  
 7 required, and the safety of any other person and the community. 18 U.S.C. § 3142(f).  
 8 The standards of proof differ with respect to the “risk of flight” and “dangerousness”  
 9 prongs of the statute. A detention order based on the defendant’s risk of flight ordinarily  
 10 must be supported by only a preponderance of the evidence. *United States v. Motamedi*,  
 11 767 F.2d 1403, 1406 (9th Cir. 1985). A detention order based on the defendant’s  
 12 dangerousness generally must be supported by clear and convincing evidence. 18 U.S.C.  
 13 § 3142(f).

14 The Court must evaluate several enumerated statutory factors to determine  
 15 “whether there are conditions of release that will reasonably assure the appearance of the  
 16 person as required and the safety of any other person and the community. . . .” 18 U.S.C.  
 17 § 3142(g). These factors include:

- 18 (1) the nature and circumstances of the offense charged . . . ,
- 19 (2) the weight of the evidence against the person;
- 20 (3) the history and characteristics of the person, including—
  - 21 (A) the person’s character, physical and mental condition, family ties,  
 22 employment, financial resources, length of residence in the community, community ties,  
 23 past conduct, history relating to drug or alcohol abuse, criminal history, and record  
 24 concerning appearance at court proceedings; and
  - 25 (B) whether, at the time of the current offense or arrest, the person was on  
 26 probation, on parole, or on other release pending trial, sentencing, appeal, or completion  
 27 of sentence for an offense under Federal, State, or local law; and



(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. *Id.*

### **ARGUMENT**

As Magistrate Judge Tsuchida correctly concluded, the factors here weigh in favor of detention.

#### ***Nature and Circumstances of the Offense***

The instant offense was extremely serious. George terrorized people throughout the country by repeatedly threatening to shoot and kill people. His threats spanned multiple months and were racially-based. He targeted the Buffalo community on the heels of one of the most horrific mass shootings in recent memory. He brought terror to workers who were tasked with answering the store phone, along with countless others who worked at the businesses. He tied up law enforcement resources investigating the threats that could have been devoted to other emergencies and law enforcement matters.

#### ***The Weight of the Evidence Against the Person***

The evidence against George is overwhelming. He gave a videotaped confession. He made the relevant calls from his phone that he subscribed to under his real name. Geolocation data shows that George made the calls at or near his residence.

#### ***History and Characteristics of the Person***

George continued to make the calls after being contacted by multiple law enforcement officers. During his post-arrest interview, George admitted to holding racist beliefs, which drove him to make the calls. It's not clear the nature of his family support—his brother-in-law and nephew, who lived with George, refused to allow Probation to run their criminal histories and generally minimized George's conduct. George reported regular marijuana use, and that he suffered from mental health issues.<sup>2</sup>

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<sup>2</sup> George takes issue with his marijuana use, noting it is legal in Washington. He also claims that nothing in his mental health history suggests he would be a danger. George misses the point—although his marijuana use and mental struggles might not, standing alone, cause considerable concern—they exacerbate the risks that he otherwise presents.

1        ***Danger to the Community if Released***

2        George cannot be trusted to follow the rules and cease his behavior if released.  
 3        After all, he continued to make threats—and indeed *escalated* his behavior—after being  
 4        contacted by law enforcement on multiple occasions. And the nature of his conduct was  
 5        so shocking—*targeting the Buffalo community by calling a Tops supermarket*—that it  
 6        reflects someone who either was out of control, or motivated by deep hate, or both.

7        ***The Defense Arguments***

8        George characterizes Magistrate Judge’s Tsuchida’s order as “illegal,” claiming  
 9        that it “transformed pre-trial detention into punishment.” Dkt.31 at 1. Judge Tsuchida did  
 10       not “punish” George, and nothing in his order or statement from the bench suggests as  
 11       much. Rather, he properly found that George was both a danger to the community and a  
 12       risk of flight.

13       George also states that his mother is willing to serve as a third-party custodian and  
 14       that he is willing to have his telephone and internet use monitored. But these proposed  
 15       conditions fall short. George committed the conduct while living with his mother—she  
 16       clearly was no curb on his behavior. Moreover, his mother is believed to be in poor  
 17       health with mobility issues, casting doubt on whether she could be an effective custodian.  
 18       And monitoring would not stop George from using someone else’s phone or other device  
 19       to make threats.

20       Finally, George suggests yet again that he has a winning First Amendment  
 21       argument. He doesn’t. He threatened to kill people, and, as the Supreme Court has  
 22       repeatedly held: “[T]hreats of violence are outside the First Amendment . . . .” *R.A.V. v.*  
 23       *City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992). George faces almost certain  
 24       conviction if he proceeds to trial, giving him an incentive to flee.

**CONCLUSION**

For the foregoing reasons, the Court should deny the motion to reopen detention.

DATED this 20<sup>th</sup> day of September, 2022.

Respectfully submitted,

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